

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHERYL L. KOBOLDT and U.S. POSTAL SERVICE,
POST OFFICE, Cadillac, MI

*Docket No. 02-1063; Submitted on the Record;
Issued September 23, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation on December 19, 2001.

On January 24, 2001 appellant, then a 34-year-old flexible city carrier, sustained an employment-related lumbar strain when she slipped and fell while delivering mail. She stopped work on January 26, 2001 and returned to restricted duty on January 29, 2001.¹

The Office continued to develop the claim and on March 27, 2001 referred appellant to Dr. Jerome Arthur Conrad, a Board-certified orthopedic surgeon, for a second-opinion evaluation. Finding that a conflict in medical opinion existed between the opinions of Dr. Conrad and that of Dr. Michael J. Ziter, appellant's treating family practitioner, regarding whether her disability was employment related and regarding the degree of limitations imposed by the employment injury, the Office referred appellant to Dr. James Coretti, an osteopathic physician, for an impartial medical evaluation.²

On November 7, 2001 appellant filed a recurrence claim, stating that she could no longer perform the limited duty.³ She stopped work on October 29, 2001. By letter dated November 13, 2001, the Office informed appellant that it proposed to terminate her compensation, based on the opinion of Dr. Coretti that her work-related disability had ceased. In

¹ The record indicates that on October 19, 1998 appellant sustained an employment-related low back strain, on February 2, 1999 pulled her abdominal muscles and on May 16, 2000 strained her back at work. All claims, including the instant claim, were combined by the Office into master file number A9-466483. She had been working restricted duty following the May 16, 2000 employment injury.

² Drs. Conrad and Coretti were furnished with the medical record, a statement of accepted facts and a set of questions.

³ Until August 2001 appellant continued to deliver mail with restrictions of no lifting over 30 pounds and limited twisting, bending and stooping. In August 2001, she began a light-duty job answering telephones.

response, appellant submitted a November 28, 2001 report from Dr. Charles J. Danek, a Board-certified physiatrist. By decision dated December 19, 2001, the Office terminated appellant's benefits, effective that day, on the grounds that the work-related disability had ceased. The instant appeal follows.

The Board finds that the Office improperly terminated appellant's compensation benefits.

Once the Office accepts a claim it has the burden of justifying termination or modification of compensation. After it has determined that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing that the disability has ceased or that it was no longer related to the employment.⁴ Furthermore, in situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such a specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.⁵

In the present case, the Office found that a conflict in the medical evidence existed between appellant's treating physician, Dr. Ziter, a family practitioner, who opined that appellant continued to suffer residuals from her employment-related condition, and Dr. Conrad, a Board-certified orthopedic surgeon who provided a second opinion for the Office and opined that appellant's work-related disability had ceased. Accordingly, the Office referred appellant, along with a statement of accepted facts and medical records, to Dr. Coretti, an osteopathic physician, for an impartial medical evaluation to resolve a conflict in the medical evidence. On the basis of Dr. Coretti's opinion, the Office determined that appellant's employment-related disability had ceased and terminated her compensation benefits effective December 19, 2001.

Office procedures require that an impartial medical specialist be a Board-certified physician unless the physician has special qualifications for performing the examination as documented by the Office medical adviser. These procedures, set forth in the Federal (FECA) Procedure Manual provide that, unlike the selection of second opinion examining physicians, selection of impartial physicians is made by a strict rotational system using the Physicians' Directory System which is a set of stand-alone software programs designed to support the scheduling of second opinion and impartial examinations. The database of physicians for impartial examinations was obtained from the Marquis Directory of Medical Specialists.⁶

⁴ See *Patricia A. Keller*, 45 ECAB 278 (1993).

⁵ See *Kathryn Haggerty*, 45 ECAB 383 (1994); *Edward E. Wright*, 43 ECAB 702 (1992).

⁶ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.4(b)(1) (March 1994); see *Charles M. David*, 48 ECAB 543 (1997). The Marquis Directory provides a listing of physicians certified by the approved medical specialty boards that are members of the American Board of Medical Specialties (ABMS). The ABMS is an organization of 24 approved medical specialty boards. The intent of the certification of physicians is to provide assurance to the public that those certified by an ABMS Member Board have successfully completed an approved training program and an evaluation process assessing their ability to provide quality patient care in the specialty. "The Official ABMS Directory of Board Certified Medical Specialists," 33rd edition, (2001).

In the instant case, Dr. Coretti cannot be considered an impartial specialist, as it cannot be ascertained if he is a Board-certified specialist. Furthermore, there is no indication in the record that Dr. Coretti has special qualifications for performing appellant's evaluation. His opinion, therefore, cannot be accorded the special weight accorded to an impartial specialist. Thus, as an unresolved conflict of opinion remains between the physicians for the Office and appellant's treating physicians regarding whether her work-related disability had ceased, the Office has not met its burden of proof to terminate appellant's compensation benefits.

The decision of the Office of Workers' Compensation Programs dated December 19, 2001 is hereby reversed.

Dated, Washington, DC
September 23, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member